Supreme Court, U.S.
FILED

No. 93-1330 FEB 1 1994

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

MAHINDER S. UBEROI,
Petitioner,

v.

UNIVERSITY OF COLORADO BOARD OF REGENTS, *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO COLORADO COURT OF APPEALS

Mahinder S. Uberoi, *pro se*
819 Sixth Street
Boulder, Colorado 80302
(303) 442-2879

QUESTIONS PRESENTED

1. May Colorado Court of Appeals dismiss with prejudice petitioner's statutory appeal for his inability to prepare and file opening brief without the record on appeal designated by him?

2. May Colorado Court of Appeals deny petitioner's unopposed motions to remand the case to replace documents lost or destroyed by trial court and to bind, paginate and certify other documents which were sent by trial court to the appellate as hundreds of shuffled loose sheets, all of which were included in petitioner's designation of record on appeal?

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1993

MAHINDER S. UBEROI, *petitioner*

v.

UNIVERSITY OF COLORADO BOARD OF REGENTS, CHARLES M. ABERNATHY JR., RICHARD J. BERNICK, PETER C. DIETZE, LYNN J. ELLING, HUGH C. FOWLER, SANDY P. KRAMER, NORWOOD L. ROBB, ALBERT R. SEEBASS, TED D. AYERS, W.A.E SKURNICK, UNIVERSITY OF COLORADO FOUNDATION, INC., CHARLES G. McCORD, JOHN KISH, LLOYD FOSDICK, JOHN TOWLE, JERRY L. JOHNSON and BEN RICH, Respondents.

PETITION FOR WRIT OF CERTIORARI TO COLORADO COURT OF APPEALS

The petitioner, Mahinder S. Uberoi, respectfully, prays that a writ of certiorari issue to review the judgment and opinion of Colorado Court of Appeals entered on April 19, 1993, rehearing denied on May 13, 1993. Colorado Supreme Court denied certiorari on October 4, 1993.

OPINIONS BELOW

The opinion of Colorado Court of Appeals and the decision of District Court of Boulder County, Colorado, entered on March 9, 1993, have not been reported. They are reprinted in the appendix hereto.

JURISDICTION

The jurisdiction of this court is invoked under 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

Parties

Petitioner is a male of Asian Indian origin, U.S. citizen, distinguished tenured professor and three-term past chairman of Department of Aerospace Engineering at University of Colorado, see *Who's Who in America* and *Who's Who in the World*, current editions.

Petitioner is not an attorney. He has appeared *pro se* at all times.

Respondent University of Colorado Board of Regents is a local governing body of State of Colorado. Individual respondents are agents, officials and police officers of the University.

Outline of Previous Relevant Litigation

For details, see *Uberoi v. University of Colorado, et al.*, U.S. Supreme Court, No. 91-1456.

On November 19, 1985, in Boulder County District Court, petitioner sued respondents for damages, punitive damages, penalties, declaratory and injunctive relief under U.S. Const. Amend. I, IV, XIV; 42 U.S.C. §§ 1981, 1983, 1985, 1986 and 1988, Colo. Const. Art. II, Bill of Rights, §§ 1, 2, 7, 24, and 25; Art. VIII §5(2), provisions governing University of Colorado, Art. XI §§ 1 and 2, prohibition against mingling of public funds, Colo. Rev. Statutes §§ 24-72-201 *et seq.* and §§ 24-72-301 *et seq.*, open public records statutes.

Under Colo. Rev. Stat. § 24-72-204(5) and § 24-72-305(7) trial court held show cause hearings and ruled that respondents illegally denied petitioner's requests for inspection of public records and ordered them to produce the records.

On respondents' motions, trial court entered summary judgment in their favor on other state and federal claims and set hearing on award of attorney fees to respondents. It ordered that petitioner should hire an attorney if he wanted to be heard at the hearing. It denied petitioner's motion to permit him to represent himself in proceedings to tax attorney fees and costs against him. See p. a1. At ex-parte hearing, it awarded respondents their attorney fees for the entire litigation even though almost all of the litigation concerned open records claims on which petitioner had prevailed.

Colorado Court of Appeals affirmed the summary judgment and award of attorney fees against petitioner after denying his motion for oral argument. Using Colorado Open Records Statues he has since discovered the Court's Internal Regulation No. 11 which states that no oral argument will be permitted if any party who is not an attorney is appearing *pro se*. See p. a3.

On respondents' motion the court ruled that the appeal was frivolous and awarded them their costs and attorney fees incurred in their defense of the appeal. It remanded the case to trial court for determination of the costs and fees.

Litigation Which is the Subject of this Petition

Petitioner moved to disqualify all judges of XX Judicial District of Colorado because of their well-documented prejudice against him because of his Asian-Indian origin and/or *pro se* status, e.g., they repeatedly awarded respondents their attorney fees for defense of claims on which petitioner had prevailed and they destroyed and/or encouraged their staff to destroy court records in the cases involving petitioner and held ex-parte hearings. The Court refused to consider the motions because petitioner has been enjoined from appearing *pro se*.

The Court awarded respondents their undocumented attorney fees and costs which they allegedly incurred in defense of the appeal, p. a4.

Proceedings in Colorado Court of Appeals

Petitioner filed notice of appeal in Colorado Court of Appeals with an advisory listing of the issues to be raised on appeal, and filed copies in the trial court. He designated the record on appeal in the trial court.

Trial court willfully destroyed some documents and dispersed other documents all of which were included in petitioner's designation of record on appeal. It shuffled the remaining documents, which were designated by petitioner and filed them in Colorado Court of Appeals.

For example, trial court detached and destroyed copies of billing statements which were attached to respondents' response to petitioner's motion to produce contemporaneous records on attorney fees. These missing documents are crucial to the issues raised on appeal that trial court awarded respondents their undocumented attorney fees and costs.

The trial court detached Exhibits A through U, consisting of some 124 pages, which were attached to petitioner's motion to disqualify all judges of XX Judicial District. It shuffled the 124 sheets, which were not certified by the trial judge as part of the record on appeal and put them in an envelope marked miscellaneous and sent the envelope, together with the record on appeal, to Colorado Court of Appeals.

The shuffled 124 sheets, which are not part of the record on appeal, are crucial to the issue raised on appeal that the trial court was prejudiced against because of his Asian-Indian origin and/or *pro se* status.

Colorado Appellate Rule 10(a)(3) states:

> The records and files of the clerk shall be certified by the trial judge.

Rule 10(a)(5) states:

> The record shall be properly paginated and fully indexed and shall be prepared and bound under the direction of the clerk of the court.

Colorado Court of Appeals denied petitioner's unopposed motions to remand the case to trial court with directions to replace the missing record with copies in the hands of the parties, and to paginate and certify hundreds of shuffled loose sheets as part of the record on appeal, as required by Rule 10(a)(3), (5). The court ruled, see pp. a8, a11.

> The Court [of Appeals] having considered the motion to replace missing record on appeal...DENIES the motion to replace missing record... By the Court. Plank, J.

Petitioner submitted that he is unable to prepare and file his opening brief by the deadline set by the Court without the record on appeal designated by him, p. a11. Respondents filed motion to dismiss appeal with prejudice. The Court wrote on the face of motion, GRANTED, p. a14.

The Court denied rehearing, p. a14. Colorado Supreme Court denied petition for writ of certiorari to Colorado Court of Appeals, p. a15.

REASONS FOR GRANTING PETITION

I.

XIV Amend. due process and equal protection prohibits suppression of state statutory right to appeal final judgment of trial court.

Colorado Court of Appeals with prejudice dismissed petitioner's appeal for his inability to do the impossible: namely to proceed with the appeal without the record on appeal designated by him. Thus, it suppressed his statutory right to appeal the final judgment of the district court, Colo. Const. Art. VI § 2(2). Petitioner has not found a reported case where an appellate court has taken such a position. It also appears to be a case of first impression for this court.

In *Hovey v. Elliot*, 167 U.S. 409 (1897), Washington State Supreme Court dismissed the appeal on a single ground that petitioner had disobeyed trial court order to turn over certain bonds which were not even the subject of this lawsuit. This court noted that a state is not constitutionally required to provide a system of appellate review. But since Washington has done so, appellate proceedings in its court are merely the final step in the judicial process in trying cases. Therefore, it cannot be

conducted to be so as to deny that "due process" which the XIV Amend. requires. Accord, *Cole v. Arkansas*, 33 U.S. 197 (1948). *Chaffin v. Stynchcombe*, 412 U.S. 17, n 11 (1973). *Blackledge v. Perry* 417 U.S. 21, 25 n 4 (1974). *Cochran v. Kansas*, 316 U.S. 255 (1942) held that state officials' suppression of petitioner's appeal beyond the time within which appeal could be had violated equal protection clause of XIV Amend.

II.

Colorado Court of Appeals must follow its rule which requires trial court to properly prepare and certify record on appeal.

Colorado Court of Appeals violated its rules by denials of petitioner's unopposed motions to remand the case to the trial court to replace the documents missing or destroyed by trial with the copies in the hands of the parties and to paginate and certify hundreds of loose sheets resulting from shuffling of other documents and which were sent to the appellate court in an envelope marked miscellaneous, all of which were included in petitioner's designation of record on appeal.

> Colorado Appellate Rule 10(a)(3) states:
>
> The records and files of the clerk shall be certified by the trial judge.
>
> Rule 10 (a)(5) states:
>
> The record shall be properly paginated and fully indexed and shall be prepared and bound under the direction of the clerk of the court.
>
> A duly authorized rule of court has the power of law and is binding upon the court...and cannot be dispensed with to suit the circumstances of any

particular case. *Rio Grande Irrig. & Colonization Co. v. Gildersleve*, 174 U.S. 603, 608 (1898).

CONCLUSION

For these various reasons the petition shall be granted.

Respectfully submitted,

Mahinder S. Uberoi, *pro se*

APPENDIX

DISTRICT COURT, BOULDER COUNTY, COLORADO

Case No. 85 CV 2080-2

MAHINDER S. UBEROI,
Plaintiff,

v.

UNIVERSITY OF COLORADO BOARD OF REGENTS, *et al.*,

Defendants

MOTION TO PERMIT UBEROI TO FULLY REPRESENT HIMSELF IN PROCEEDINGS TO TAX ATTORNEY FEES AND COSTS AGAINST HIM.

I. The Court has entered final judgment on the merits which is appealable regardless of any unresolved issues of attorney fees. *Baldwin v. Bright Mortgage Co.*, 757 P. 2d 1072 (Colo. 1988). The judgment has been appealed to Colorado Supreme Court, Case No. 89 SA 228. The proceedings to tax attorney fees and costs against Uberoi are separate proceedings in which he is appearing in a defensive position. Notwithstanding any orders of Judge Roxanne Bailin and/or Morris W. Sandstead, Jr. the Court lacks jurisdiction to prevent Uberoi from appearing *pro se* in a defensive position relating to claims against him for costs and attorneys' fees since it would violate U.S. Const. Amend. V, No person shall be . . . deprived of life, liberty and property, without due process, Amend. XIV. No state shall deprive any person of life, liberty or property without due process of law; nor deny any person within its jurisdiction the equal protection of law; it would also

violate Colo. Const. Art. II. No person shall be deprived of life, liberty or property without due process of law.

2. In *Board of County Commissioners of the County of Boulder v. Barday*, 594 P.2d 1057, (Colo. 1979), the Supreme Court enjoined a person from appearing as a pro se plaintiff in suits relating to his marital difficulties. The Court specifically held that:

> [he] is still free to appear pro se in his own *defense*. Thus, this injunction works no infringement on respondent's constitutional rights. [Emphasis in the original, at 1059].

3. In *Shotkin et al., v. Kaplan et al.*, 180 P.2d 1021 (Colo. 194), the Supreme Court enjoined Shotkin from appearing as a pro se plaintiff. The court specifically held that:

> There is not involved here the right of a party to represent himself when made defendant or defendant in error. At 1022.

4. The Court should consider this motion as an emergency application and immediately enter a ruling so that, if necessary, Plaintiff may seek relief from Colorado Supreme Court.

5. A copy of this motion is being served on Clerk of Division 2 so that it is brought to Judge Morris W. Sandstead Jr.'s attention as an emergency application. Exhibit A.

WHEREFORE, Plaintiff prays that the Court grant permission to Uberoi to fully represent himself in proceedings to tax costs and attorney fees against him and that the court provide such further and additional relief it deems just and proper.

Dated: August 15, 1989

Respectfully submitted,

By MAHINDER S. UBEROI, pro se

Motion denied, 8-16-89 Morris Sandstead, District Judge

COLORADO COURT OF APPEALS

Internal Regulation No. 11

ORAL ARGUMENT
EX PARTE AND PRO SE,
OUT-OF-STATE ATTORNEYS

There will be no oral arguments in ex parte cases, nor in cases in which either or both parties appear pro se and are non-lawyers. In such cases, the case will be ordered submitted on the briefs. A pro se attorney may argue a case, if there is an attorney on the other side as counsel or pro se.

A corporation must be represented by an attorney. House counsel, an officer, director, or stockholder of the corporation may represent the corporation and argue the case, only if such person is an attorney admitted to practice in Colorado.

In all situations referred to in these internal regulations, the term "attorney" or "lawyer" means an attorney who is licensed to practice in Colorado. Attorneys who are not licensed to practice in Colorado, but are licensed, and in good standing elsewhere may practice in the Court of Appeals only by special permission, pursuant to C.R.C.P. 22.1.

DISTRICT COURT, COUNTY OF BOULDER, STATE OF COLORADO

Civil Action No. 85 CV 2080, Division 2

JUDGMENT

MAHINDER S. UBEROI,

Plaintiff,

vs.

UNIVERSITY OF COLORADO BOARD OF REGENTS, CHARLES M. ABERNATHY, JR., RICHARD J. BERNICK, PETER C. DIETZE, LYNN J. ELLING, HUGH C. FOWLER, SANDY F. KRAMER, NORWOOD L. ROBB, ALBERT R. SEEBASS, TED D. AYERS, W.A.E. SKURNICK, UNIVERSITY OF COLORADO FOUNDATION INC.., CHARLES G. McCORD, JOHN KISH, LLOYD FOSDICK, JOHN TOWLE, JERRY L. JOHNSON and BEN RICH,

Defendants.

THIS MATTER having come before the Court upon the mandate and direction of the Colorado Court of Appeals to award attorney fees to the University Defendants incurred in connection with the appeal in this matter, and the Court, having heard expert testimony concerning the reasonableness and necessity of the fees in the appeal at the hearing on February 10, 1992,

HEREBY FINDS that attorney fees in the amount of $6,100.50 and costs in the amount of $162.50 incurred by Cooper & Kelley, P.C. in connection with the appeal are reasonable and necessary, and

FURTHER FINDS that expert witness fees of Alan Epstein, Esq. in the amount of $2,040.00 are reasonable and necessary, and that the University defendants are entitled to recover these expert witness fees from the Plaintiff pursuant to §§ 13-16-122(1)(e) and 13-33-102(4), C.R.S., and now, therefore,

IT IS HEREBY ORDERED that judgment shall enter against the Plaintiff and for the Defendants University of Colorado Board of Regents, Charles M. Abernathy, Jr., Richard J. Bernick, Peter C. Dietze, Lynn J. Elling, Hugh C. Fowler, Sandy F. Kramer, Norwood L. Robb, Albert R. Seebass, Ted D. Ayers, W.A.E. Skurnick, John Kish, John Towle, and Ben Rich in the amount of EIGHT THOUSAND THREE HUNDRED AND THREE DOLLARS AND NO CENTS ($8,3030.00)

DATED this 9th day of March, 1992.

BY THE COURT:

Morris W. Sandstead, Jr., District Court Judge

COURT OF APPEALS, STATE OF COLORADO

Case No. 92 CA 944

MOTION TO REPLACE MISSING RECORD ON APPEAL WITH COPIES IN HANDS OF PARTIES

MAHINDER S. UBEROI,
Plaintiff-Appellant,

v.

UNIVERSITY OF COLORADO, *et al.*,
Defendants-Appellees.

1. Appellant moved to settle the record on appeal because several hundred pages of it are missing. The court ordered trial court to file supplemental record. Exhibit A. Trial court responded that the missing record in not in its file. This court ordered that there being no supplemental record, the opening brief is due on or before December 14, 1992. Exhibit B.

2. Defendants have not responded to appellant's motions to settle the record on appeal. Therefore, they are presumed to have confessed to the motions and factual allegations therein and in particular that they were served copies of the documents which are now missing from the trial court file for the case.

3. The trial court states that hundreds of missing pages were not a part of the record, otherwise they would have been included in the record on appeal. Exhibit B. Appellant states that he personally filed them in the trial court.

4. The trail court has confessed to *repeatedly* losing or destroying records and evidence in plaintiff's cases. See documentary evidence to this effect in *Renewal Motion to settle the record on appeal, extension of time and disclosure of names and titles of judicial officials who resolved the initial motion*. That motion was filed on October 27, 1992 and remains unresolved. Appellant asserts that the trial court violated his XIV Amend. and Colo. Const. right of equal protection and due process and violated his right of appellate review based on the full record designated by him, under Colo. Const. Art. VI §2(2).

5. The dispute about the completeness of the record on appeal and confusion therein cannot be settled here. It should be settled in the trial court where evidentiary hearing may be held if it is necessary to settle the record on appeal.

6. Appellate review based on record less than that designated by appellant is *meaningless* and violates his federal and state rights cited in ¶ 4, *supra*.

WHEREFOR, Plaintiff-appellant prays that the case be remanded to the trial court to replace the missing record with copies of the same which are in the hands of the parties; and that documents be arranged in the sequence in which they were filed in compliance with C.A.R. 10(a)(5); and

that the court resolve Plaintiff-Appellant's renewal motion filed on October 27, 1992.

Dated: December 9, 1992

Respectfully submitted,

Mahinder S. Uberoi, *pro se*

COLORADO COURT OF APPEALS **ORDER**
No. 92CA0944 Tr. CT. No. 85CV2080

Mahinder Uberoi,

Plaintiff-Appellant,

v.

University of Colorado Board of Regents et al.,

Defendant-Appellees.

The court, having considered the motion to replace missing record on appeal and for extension of time,

DENIES the motion to replace missing record and GRANTS and an extension of time to file the opening brief to and including January 25, 1993.

BY THE COURT, Plank, J.

COURT OF APPEALS, STATE OF COLORADO
CASE NO. 92 CA 0944

MOTION TO PAGINATE UNPAGINATED RECORD AND REFER TAMPERING WITH RECORD TO PROPER AUTHORITIES

MAHINDER S. UBEROI
Plaintiff-Appellant,
v.

UNIVERSITY OF COLORADO BOARD OF REGENTS, *et al.*,
Defendants-Appellees.

1. In Trial Court, Plaintiff-appellant filed "Verified motion to disqualify all District Judges of XX Judicial District." The motion consisting of 14 pages and its Exhibits A through U consisting of some 124 pages were all stapled together. At the time appellant designated the record on appeal, he examined Trial Court file for the case and found that the motion and its Exhibits were bound together in a volume of the record.

2. In the record on appeal as filed in this court, the motion appears in Volume I at pages 131-144 without its Exhibits. Appellant first believed that Exhibits were lost or destroyed by Trial Court. He now finds that Exhibits to the motion have been placed in the envelope which is part of the record, as *unpaginated loose* sheets of paper. C.A.R. 10(a)(5) requires that "The record shall be properly paginated."

> A duly authorized rule of court has the power of law and is binding upon the court...and cannot be dispensed with to suit the circumstances of any case. *Rio Grande Irrig. & Colonization Co. v. Gildersleve* 174 U.S. 603, 608 (1898).

3. Judicial officials of Trial Court tampered with trial court record and submitted the tampered record on appeal to this court and thus violated C.R.S. § 18-8-1610 which, *inter alia*, states:

> A person commits tampering with physical evidence if, believing that an official proceeding is pending or about to be instituted and acting without legal right or authority, he:
>
> (a) Destroys, mutilates, conceals, removes or alters physical evidence with intent to impair its verity or availability in the pending or prospective official proceedings;...

4. Colo. Const. Art. VI 2(2) guarantees Plaintiff-appellant right to appeal final judgment of the District Court. U.S. Supreme Court has repeatedly held that once a state has established avenues of appeals, then under due process and equal protection provisions of XIV Amend., it must, without hindrance, provide "open and equal access to the courts." *Blackledge v. Perry*, 417 U.S. 21, 25 n 4 (1974); *Rinaldi v. Yeager*, 384 U.S. 305, 310 (1966); *Lane v. Brown*, 372 U.S. 477 (19); *Draper V. Washington*, 372 U.S. 487 (1963); *North Carolina v. Pearce*, 395 U.S. 711, 724-725, (1969); *Chaffin v. Stynchcombe*, 412 U.S. 17, 24 n11, (1973).

5. Moreover, Plaintiff-appellant's free and unhindered access to the courts is assured under und I Amend. right to peaceably assemble and petition the government. Judicial officials of Trial Court, acting under the color of law, tampered with the record to willfully deny appellant's said federal rights because of his Asian Indian origins and/or *pro se* status and thus violated 18 U.S.C. §§ 241 & 242.

> Judges [and judicial officials] who would willfully discriminate on grounds of race or otherwise deprive a citizen of his [federal] rights...must take account

> of 18 U.S.C. § 242 *O'Sea v. Littleton*, 414 U.S. 488, 503 (1974).
>
> One may violate 18 U.S.C. § 242 by willful failure to carry out his duty. *Catlette v. United States*, 132 F.2d, 902, 9907 (CA 4, 1943). *Lynch v. United States*, 189 F.2d. 476, 479 (CA 5, 1951). Cert Den. 342 U.S. 831.

6. At the time Plaintiff-appellant designated the record on appeal, his inspection of Trial Court records in this case showed that all documents were filed in the sequence in which they were generated. However, Trial Court record was tampered so that in the record on appeal the documents have been randomly scattered to prevent appellant from fully exercising his said state and federal rights. The random scattering of the record constitutes separate and independent violations of C.R.S. § 18-8-610 and 18 U.S.C. §§ 241 & 242.

7. This court has the duty to inform proper authorities about the offense.

> Judge...had duty to notify proper authorities if he felt that a crime was being committed. *Martinez v. Winner*, 717 F.2d 424, 435 (Tenth Cir. 1985), Vacated on other grounds.

WHEREFORE, Plaintiff-appellant prays that the case be remanded to Trial court with direction to paginate some 124 loose sheets of paper in the envelope and arrange the record in the sequence in which it was generated, in accordance with C.A.R. 10(a)(5) "The record shall be properly paginated and fully indexed," and that the briefing schedule be re-established after the properly paginated record is filed; and that

the court refer the violations of C.R.S. § 18-8-610 to the District Attorney and violations of 18 U.S.C. §§ 241 &

242 to United States Attorney, and provide such further and additional relief it deems just and proper.

Dated: January 22, 1993

Respectfully submitted

By Mahinder S. Uberoi, *pro se*

DENIED, January 26, 1993 with leave to argue in the brief how the record affects this case.

By the Court, Plank, J.

COURT OF APPEALS, STATE OF COLORADO

Case No. 92 CA 0944

RESPONSE TO REPETITIOUS MOTION TO DISMISS

MAHINDER S. UBEROI,
Plaintiff-appellant,
v.
UNIVERSITY OF COLORADO, et al.,
Defendants- appellees.

While defendants-appellees' motion to dismiss is pending and remains unresolved, on April 6, 1993, they filed a repetitious motion to dismiss. Appellant responds by incorporating by reference his response filed on March 29, 1993, and earlier motions filed October 27, 1992 and March 4, 1993.

He further reiterates that opening brief cannot be prepared on the basis of incomplete record on appeal. The court's repeated orders to do so violate his state and federal rights of meaningful appellate review of final judgment of district court as set forth in his earlier motions.

The court should settle the record on appeal and re-establish the briefing schedule as set forth in his previous motions.

Respectfully submitted,

April 10, 1993 By Mahinder S. Uberoi, pro se

COURT OF APPEALS, STATE OF COLORADO

Case No. 92 CA 944

MOTION TO DISMISS APPEAL

MAHINDER S. UBEROI,

Plaintiff-appellant,

v.

UNIVERSITY OF COLORADO BOARD OF REGENTS, CHARLES M. ABERNATHY, JR., RICHARD J. BERNICK, PETER C. DIETZE, LYNN J. ELLING, HUGH C. FOWLER, SANDY F. KRAMER, NORWOOD L. ROBB, ALBERT R. SEEBASS, TED D. AYERS, W.A.E. SKURNICK, UNIVERSITY OF COLORADO FOUNDATION INC.., CHARLES G. McCORD, JOHN KISH, LLOYD FOSDICK, JOHN TOWLE, JERRY L. JOHNSON and BEN RICH,

Defendants-Appellees.

Defendants-Appellees, by and through their attorneys, COOPER & KELLEY, P.C., hereby moves the Court pursuant to C.A.R. 38(b) to dismiss this appeal, and as grounds therefor states:

1. On March 12, 1993, the Court granted Appellant an extension of time until April 5, 1993 in which to file his Opening Brief on appeal. *See* Exhibit A.

2. The Opening Brief was not filed in this Court by the date it was due; Appellant has not sought a timely extension of time to file the Opening Brief pursuant to C.A.R. 26, or otherwise shown good cause for an extension of time in which to file the Opening Brief. Accordingly, the appeal should be dismissed pursuant to C.A.R. 38(b) because of the Appellant's failure to file the Opening Brief in a timely manner pursuant to C.A.R. 31(a).

WHEREFORE, Defendants-Appellees respectfully request the Court to dismiss this appeal pursuant to C.A.R. 38(b) for failure to file the Appellants Brief, to award costs on dismissal pursuant to C.A.R. 39(a), and to grant such further relief as the court deems just and proper.

April 6, 1993

Respectfully submitted,

COOPER & KELLEY, P.C.

John R. Mann
Attorney for Defendants-appellees

EXHIBIT A

COLORADO COURT OF APPEALS **ORDER**
No. 92CA0944 Tr. Ct. No. 85CV2080

Mahinder Uberoi,

Plaintiff-Appellant,

v.

University of Colorado Board of Regents et al.,

Defendant-Appellees.

The court, having considered the motion to dismiss and having received no response thereto,

ORDERS that is the opening brief is not filed by April 5, 1993, the appeal shall be dismissed without further notice.

Dated: March 12, 1993

BY THE COURT, Sternberg, C.J.; Ney, J.; Marquez, J.

GRANTED April 19, 1993. Appeal dismissed with prejudice. Rothenberg, Ruland; Briggs, J.J.

THE COURT OF APPEALS
OF THE STATE OF COLORADO

Case Number 92CA944

ORDER

MAHINDER S. UBEROI VS. UNIVERSITY OF COLORADO, ET AL.

Upon consideration of the petition for Rehearing ON DISMISSAL filed by the Appellant herein, the Petition is hereby DENIED. It is ordered that issuance of the Mandate is stayed, to and including June 14, 1993, provided that if a Petition for Writ of Certiorari is timely filed with the Supreme Court of the State of Colorado, the stay shall remain in effect until disposition of the cause by the Supreme Court.

BY THE COURT: Rothenberg, J; Ruland, J; Briggs, J.

DATED: May 13, 1993

SUPREME COURT, STATE OF COLORADO
CASE NO. 93SC370
CERTIORARI TO THE COLORADO COURT OF APPEALS, 92CA0944
BOULDER DISTRICT COURT, 85CV2080

ORDER OF COURT

MAHINDER S. UBEROI,

Petitioner,

v.

UNIVERSITY OF COLORADO BOARD OF REGENTS, CHARLES M. ABERNATHY, JR., RICHARD J. BERNICK, PETER C. DIETZE, LYNN J. ELLING, HUGH C. FOWLER, SANDY F. KRAMER, NORWOOD L. ROBB, ALBERT R. SEEBASS, TED D. AYERS, W.A.E. SKURNICK, UNIVERSITY OF COLORADO FOUNDATION INC.., CHARLES G. McCORD, JOHN KISH, LLOYD FOSDICK, JOHN TOWLE, JERRY L. JOHNSON and BEN RICH,

Respondents.

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals, and after review of the record, the briefs, and the judgment of said Court of Appeals.

IT IS THIS DAY ORDERED that said Petition for Writ of Certiorari shall be, and same hereby is, DENIED.

BY THE COURT, EN BANC, OCTOBER 4, 1993.